

37 Am. Jur. 2d Fraud and Deceit § 27

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Fraud and Deceit

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II. Elements and Requisites

A. Basis of Action

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§ 27. Misrepresentation—Fraudulent misrepresentation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

Under the law of some jurisdictions, fraud encompasses, among other things, the theories of fraudulent misrepresentation and fraudulent concealment.¹ The basis of fraudulent misrepresentation is the creation of a false impression and damage sustained as a natural and probable consequence of the act charged.² Generally, in a claim of fraudulent misrepresentation, a plaintiff must prove that the defendant made a false representation of a material fact with knowledge of its falsity; the representation related to a past or present fact; the defendant intended the representation to induce the plaintiff to act or be justified in acting upon it; the plaintiff acted in reliance upon the representation to his or her detriment; the plaintiff's reliance was reasonable under the circumstances; and the false statement proximately caused the plaintiff's injury.³ To recover in a tort action for fraudulent misrepresentation, the plaintiff must prove that the defendant made a false representation of a material fact; that its falsity was either known to the defendant or that the representation was made with such reckless indifference to the truth as to be the equivalent to actual knowledge of its falsity; that the representation was made with intent that the plaintiff act on it; that the plaintiff was ignorant of the falsity of the representation; that the plaintiff not only relied on the representation but had a right to rely on it and would not have done the thing from which the injury arose had the misrepresentation not been made; and that the plaintiff actually suffered damage directly resulting from the misrepresentation.⁴ To state a claim for fraudulent misrepresentation, a plaintiff must allege that the defendant's misrepresentation was made with the intent or knowledge that it would be communicated to the plaintiff with the intent to deceive him or her.⁵ Under the law regarding fraudulent misrepresentation, the fraud element is proved when it is shown that a false representation was made knowingly, or in conscious ignorance of the truth, or recklessly without caring whether it be true or false.⁶

Observation:

A plaintiff may not recover against an accountant for fraudulent misrepresentations made to a third party where the third party did not communicate those misrepresentations to the plaintiff, even if the defendant knew that the third party was required to communicate any negative information to the plaintiff, and the plaintiff relied to his or her detriment on the absence of any such

communication.⁷

Practice Tip:

Fraudulent misrepresentation is an intentional tort,⁸ and like other intentional torts, recovery is not necessarily barred by the fault of the plaintiff that contributed to the damage.⁹

CUMULATIVE SUPPLEMENT

Cases:

Under Michigan law, a claim of fraudulent misrepresentation requires proof of six elements: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without any knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [Bushman v. American Title Co. of Washtenaw](#), 101 F. Supp. 3d 714 (E.D. Mich. 2015).

In order for a plaintiff to prevail on a claim of fraudulent misrepresentation, he or she must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance. [Certain Underwriters at Lloyd's, London v. Abbott Laboratories](#), 2014 IL App (1st) 132020, 384 Ill. Dec. 354, 16 N.E.3d 747 (App. Ct. 1st Dist. 2014).

A misrepresentation in order to constitute a fraud must consist of a statement of material fact, false and known to be so by the party making it, made to induce the other party to act, and, in acting, the other party must rely on the truth of the statement. [Bangaly v. Baggiani](#), 2014 IL App (1st) 123760, 386 Ill. Dec. 181, 20 N.E.3d 42 (App. Ct. 1st Dist. 2014).

The elements of fraudulent inducement are: (1) defendant made false representations as a statement of existing and material fact, (2) defendant knew the representations to be false or made them recklessly without knowledge concerning them, (3) defendant made the representations intentionally for the purpose of inducing another party to act upon them, (4) the other party reasonably relied and acted upon the representations, (5) the other party sustained damages by relying upon the representations. [Stechschulte v. Jennings](#), 298 P.3d 1083 (Kan. 2013).

"Common-law fraud" or "fraudulent misrepresentation" entails a defendant making a false representation of material fact with the intention that the plaintiff would rely on it, the defendant either knowing at the time that the representation was false or making it with reckless disregard for its accuracy, and the plaintiff actually relying on the representation and suffering damage as a result. [Barclae v. Zarb](#), 300 Mich. App. 455, 834 N.W.2d 100 (2013).

A tort action for fraud requires a contract between the parties, a misrepresentation of facts, suppression of facts, misleading another, or promising without an intent to perform, reliance on the false or misleading representation, and proof of actual damages proximately caused by the misrepresentation or nondisclosure. [NDCC 9-03-08. Northstar Founders, LLC v. Hayden Capital USA, LLC](#), 2014 ND 200, 2014 WL 5487557 (N.D. 2014).

Elements which constitute the basis for a claim of fraudulent misrepresentation are: (1) a representation, or where there is a duty to disclose, concealment of a fact, (2) which is material to the transaction at hand, (3) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (4) with the intent of misleading another into relying on it, (5) justifiable reliance upon the representation or concealment, and (6) a resulting injury proximately caused by the reliance. [Buchanan v. Improved Properties, LLC, 2014-Ohio-263, 7 N.E.3d 634](#) (Ohio Ct. App. 3d Dist. Allen County 2014).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Iverson v. Johnson Gas Appliance Co., 172 F.3d 524 \(8th Cir. 1999\) \(applying Minnesota law\).](#)
- ² [F.D.I.C. v. Hamilton, 122 F.3d 854 \(10th Cir. 1997\) \(applying Oklahoma law\).](#)
- ³ [Edlow v. RBW, LLC, 688 F.3d 26 \(1st Cir. 2012\) \(applying Massachusetts law\); DiMare v. MetLife Ins. Co., 369 Fed. Appx. 324 \(3d Cir. 2010\) \(applying New Jersey law\); Bouriez v. Carnegie Mellon University, 585 F.3d 765, 250 Ed. Law Rep. 532 \(3d Cir. 2009\) \(applying Pennsylvania law\); Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547 \(7th Cir. 2012\) \(applying Illinois law\); Cox v. Mortgage Electronic Registration Systems, Inc., 685 F.3d 663 \(8th Cir. 2012\) \(applying Minnesota law\); Lakeside Feeders, Inc. v. Producers Livestock Marketing Ass’n, 666 F.3d 1099 \(8th Cir. 2012\) \(applying Iowa law\); Dahlgren v. First Nat. Bank of Holdrege, 533 F.3d 681 \(8th Cir. 2008\) \(applying Nebraska law\); Alpine Bank v. Hubbell, 555 F.3d 1097 \(10th Cir. 2009\) \(applying Colorado law\); Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 919 N.Y.S.2d 465, 944 N.E.2d 1104 \(2011\); ISG State Operations, Inc. v. National Heritage Ins. Co., Inc., 234 S.W.3d 711 \(Tex. App. Eastland 2007\); State v. Apotex Corp., 2012 UT 36, 282 P.3d 66 \(Utah 2012\); Jennings v. Farmers Mut. Ins. Co., 224 W. Va. 636, 687 S.E.2d 574 \(2009\).](#)
- ⁴ [Lafarge North America, Inc. v. Discovery Group L.L.C., 574 F.3d 973 \(8th Cir. 2009\) \(applying Missouri law\); Swinson v. Lords Landing Village Condominium, 360 Md. 462, 758 A.2d 1008 \(2000\).](#)
- ⁵ [Bennett v. MIS Corp., 607 F.3d 1076 \(6th Cir. 2010\) \(applying Michigan law\).](#)
- ⁶ [Coleman v. Sears, Roebuck & Co., 319 F. Supp. 2d 544 \(W.D. Pa. 2003\) \(applying Pennsylvania law\).](#)
- ⁷ [Securities Investor Protection Corp. v. BDO Seidman, L.L.P., 95 N.Y.2d 702, 723 N.Y.S.2d 750, 746 N.E.2d 1042 \(2001\).](#)
- ⁸ [Sturm v. Harb Development, LLC, 298 Conn. 124, 2 A.3d 859 \(2010\); Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726 \(Iowa 2009\).](#)
- ⁹ [Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726 \(Iowa 2009\).](#)

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